



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

**PAULA LUCOTTI,
Complainant,**

and

**CITY OF CHICAGO,
Respondent.**

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) **Charge No: 1991 CN 0942**
) **EEOC No: N/A**
) **ALS No: 5388**
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RECOMMENDED ORDER AND DECISION

On September 26, 1990, Complainant filed a Charge with the Illinois Department of Human Rights (Department) alleging discrimination on the basis of handicap in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq., (Act). On August 19, 1991, Complainant filed this Complaint alleging Respondent, City of Chicago, Department of Police (Police Department) discriminated against her on the basis of mental and physical handicap. Respondent filed a *Motion to Dismiss for Lack of Jurisdiction* on October 22, 1991; that motion was denied on June 3, 1992.

Respondent filed a motion for summary decision on December 3, 1997. Administrative Law Judge (ALJ) Ricardo Tate entered a Recommended Order and Decision granting the motion on September 13, 1999. On April 25, 2001, a Commission panel declined to adopt the ALJ's Recommended Order and Decision and remanded the matter to the Administrative Law Section for further proceedings in its Order and Decision of April 25, 2001. The Commission panel ruled in pertinent part:

The complainant's claim regarding any alleged act of discrimination claimed to have occurred more than 180 days prior to September 26, 1990 is not within the jurisdiction of this Commission and is dismissed, ..."

A public hearing was held on August 19, 20, 21, 26, 27, and 28, 2002. This matter is ready for decision.

CONTENTIONS OF THE PARTIES

Complainant contends Respondent unlawfully discriminated against her on the basis of mental and physical handicap when it refused to permit Complainant to return to duty on August 30, 1990, and failed to provide her with a reasonable accommodation, forcing her on involuntary medical leave. Respondent contends that Complainant was determined to

be psychologically unfit to perform police duties by Respondent's medical professionals and was therefore not eligible for any police officer position, with or without an accommodation.

The following facts were determined to have been proven by a preponderance of the evidence. Assertions made at the public hearing that are not addressed herein were determined to be unproven or immaterial to this decision.

FINDINGS OF FACT

1. Initially, Complainant worked for Respondent City of Chicago at the Chicago Police Department as a civilian employee with the auto pound section for nine years. Complainant then applied for a police officer position with Respondent.
2. Complainant was appointed to the Chicago Police Academy April 13, 1981 for a one-year training program.
3. Complainant successfully completed the Police Academy in April 1982 and was assigned to the 21st District in the patrol division.
4. Complainant's duties in the patrol division included driving around, responding to calls, making arrests, issuing tickets, serving and protecting.
5. Complainant worked on patrol for a month and was then assigned to the women's lockup.
6. Part of Complainant's duties in the women's lockup included physically restraining prisoners if necessary.
7. In October 1982, while Complainant was on furlough, she was involved in an off-duty car accident and was hospitalized with injury to her lower back.
8. Complainant was hospitalized for the back injury and stayed off from work for two weeks.
9. When Complainant returned to work, she applied for the "convalescent duty program" by reporting her injury to Respondent's medical section and bringing letters from her doctor stating her current condition due to her injury.
10. The convalescent program is a short-term program, which allows police officers approximately six months to recover from their injuries.
11. After around six months, Complainant's back injuries did not improve; therefore, Complainant was placed on the "limited duty program."
12. Sworn members assigned to limited/convalescent duty are required to safely carry, handle and use a Department approved, prescribed service revolver in accordance with Department Special Order 81-13, dated June 11, 1989.
13. On the limited duty program, Complainant was reassigned to the auto pound section.
14. Complainant worked in the limited duty program from around April 1982 through 1985.
15. In 1985, Complainant had surgery on her jaw to treat a temporal mandibular joint problem (TMJ). Following that surgery, Complainant was off from work for 4-5 weeks.
16. When Complainant returned to work, she sought to return to the limited duty

- program because of her jaw and back injuries.
17. Complainant was returned to the auto pound section on the limited duty program.
 18. Complainant worked as an accounting officer in the auto pound limited duty program.
 19. Lt. Mucia was Complainant's supervisor in the auto pound section.
 20. The accounting officer's duties were to collect storage and tow fees from car claimants, secure the money into an envelope, count the money, balance out the money and the receipts, seal the money and the paperwork in a money bag and deliver the money to City Hall.
 21. In her capacity as accounting officer in the auto pound, Complainant wore a full uniform and carried a service revolver.
 22. In August 1986, Complainant underwent a hysterectomy, which caused her to become depressed due to the thought of not being able to have children.
 23. Complainant began seeing Dr. Calica for therapy following her hysterectomy.
 24. Complainant reported to Respondent's medical section approximately every six months from 1983 through 1988 while on the limited duty program.
 25. In late 1986, Complainant reported her depression to Dr. Paul Mesnick, the Chief Surgeon and Medical Director at Respondent medical section at the time.
 26. Complainant continued to provide periodic medical statements from her doctors to Dr. Paul Mesnick in the medical section through 1989.
 27. Complainant was on limited duty status from October 1982 until March 1989, except for the time she was on furlough or on the medical roll.
 28. Commander Wedgbury, now retired, had joined the Respondent police department in July 1968 and served as Commanding Officer of the 911 Communications Operations Section from August 1989 through September 1990; he has also held positions as the Commanding Officer of Management and Labor Affairs and Director of Personnel and was formerly a police officer, sergeant, lieutenant and captain.
 29. According to Commander Wedgbury, the essential duties of a police officer are to be ambulatory without assistance and to safely carry a firearm.
 30. The ability to carry a firearm also includes psychological ability to use appropriate judgment in terms of use of deadly force.
 31. All uniformed police officers must take and pass a test on the firearm range annually.
 32. Complainant successfully passed the range qualification to carry a weapon in early 1989 and for each year prior.
 33. Although stripped of their police powers and their firearms, some police officers were permitted to work while awaiting adjudicatory disciplinary procedures, including disciplinary procedures for alleged drug and alcohol use.
 34. The *Rules and Regulations of the Police Department City of Chicago* published November 1, 1975, (*Rules and Regulations*) requires sworn officers to have the physical and psychological/emotional stability to properly perform all required police duties.
 35. In accordance with the *Rules and Regulations*, the duties of sworn Police Officers are: "Sworn members will devote themselves fully to the attainment of the letter

and spirit of the Departmental policy and goals, and will conduct themselves at all times in such a manner as will reflect credit upon the Department with emphasis on personal integrity and professional devotion to law enforcement. They will: 1. Render the highest order of police service to all citizens, whether or not during specifically assigned hours. 2. Obey all laws and promptly execute all lawful orders. 3. Know and conform to the Department's Policy, Rules, Regulations, Orders, Procedures and Directives. 4. Receive, record and service immediately all complaints and requests for service in accordance with Department Orders. 5. Provide security and care for all persons and property coming into their custody. 6. Maintain a military bearing and render military courtesy when in uniform. 7. Maintain a courteous and respectful attitude toward all persons."

36. As part of the limited duty program, Complainant was required to be reevaluated every six months by Respondent's medical personnel in the medical section.
37. Complainant was ordered by Respondent to report to the medical section March 2, 1989. Complainant tendered a letter to the medical section from Judith Calica, her psychologist, dated February 26, 1989, and addressed to Dr. Mesnick, stating Complainant has had a resurgence of her symptoms, that she remains very vulnerable to stress and anxiety and recommending Complainant remain in her present position, which places a minimum amount of stress on her vulnerable ego.
38. Complainant also tendered a letter to the medical section from Dr. Lagrotteria, dated February 23, 1989, indicating Complainant should avoid any physical injury or possibility of being involved with physical trauma.
39. Complainant further submitted a letter to the medical section from Dr. Conroe addressed to Dr. Mesnick, dated February 27, 1989, stating that he has prescribed Complainant the medication Prozac because of a recent return of depression and susceptibility to stress and further recommending she stay in her current limited duty position.
40. Complainant's limited duty requirements provided that Complainant not perform any field or patrol work.
41. After receiving the letters, Dr. Strodolow, of Respondent's medical section, recommended that Complainant was fit for full duty and should be returned to full duty.
42. After Complainant protested Dr. Strodolow's recommendation, he advised her to speak to the Sergeant Reese, the medical sergeant, about her disagreement with the recommendation.
43. Complainant spoke to Sergeant Reese about Dr. Strodolow's recommendation and was advised by Sergeant Reese to file a written appeal.
44. Complainant filed a written appeal with Respondent and attached the February 23, 1989 letter from Dr. Lagrotteria, the February 26, 1989 letter from Dr. Calica, the February 27, 1989 letter from Dr. Conroe, and a letter from Complainant to Dr. Mesnick requesting an appeal from the decision to return her to full duty status.
45. Around March 30, 1989, Sergeant Reese of Respondent's medical section informed Complainant to report to the medical section immediately.
46. When Complainant reported to the medical section, her superior officer, Lt.

- Mucia from the auto pound section, along with another officer were present. Sgt. Reese ordered Complainant to turn over her star, shield and identification and to go home.
47. Complainant received a document titled *RELEASE FROM POWERS OF ARREST* dated March 30, 1989, signed by Sergeant Reese. The document continued Complainant on the medical roll, and ordered Complainant not to carry a firearm or other deadly weapon and not to exercise the power of arrest or other police power and instructed that this order will continue in effect until further notice.
 48. On March 31, 1989, Complainant filed a grievance with the assistance of her bargaining unit, objecting to having been stripped of her police powers and placed on the medical roll unjustly.
 49. Complainant was given a form titled MEDICAL/PSYCHOLOGICAL EXAMINATION RIGHTS dated March 30, 1989, informing her that she is required to submit to an examination by the Respondent to determine her psychological and emotional stability to perform all required police duties.
 50. Stanard & Associates is a psychological vendor contracted by the Respondent to perform psychological services, including screening of recruits and psychological evaluations on incumbent personnel.
 51. The Issac Ray Center is a similar psychological vendor, which was contracted by Respondent prior to Stanard & Associates.
 52. Complainant was ordered to report to the Issac Ray Center on April 18, 1989. Complainant reported to Dr. Janik, at the Issac Ray Center, who administered tests to her.
 53. Complainant received a copy of the Issac Ray recommendation on May 3, 1989.
 54. The Issac Ray recommendation determined Complainant to be unfit for duty.
 55. Complainant saw Dr. Janik again around August 1989.
 56. Complainant received a copy of Dr. Janik's second results on November 3, 1989 determining again that Complainant was unfit for duty.
 57. In February 1990, Respondent ordered Complainant to report to Stanard & Associates.
 58. Complainant reported to Stanard & Associates and was examined by Dr. Rodney Fralicx on February 28, 1990. Complainant informed Dr. Fralicx that she wished to return to work.
 59. Dr. Fralicx issued a report and advised the Respondent of his recommendation that Complainant was severely depressed and was not psychologically fit to return to limited or full active duty, and further recommending that she be re-evaluated in 3-4 months.
 60. On March 30, 1990, Complainant received a copy of the evaluation report finding Complainant psychologically unfit for police duty.
 61. On April 23, 1990, Complainant's medical benefits ran out and her lieutenant and timekeeper suggested that she begin using her earned compensatory time in order to remain in pay status while still on medical leave.
 62. Complainant's accumulated compensatory time lasted until August 24, 1990.
 63. Complainant then applied for a leave of absence on August 25, 1990.
 64. Complainant requested an extension of her leave of absence on August 25, 1991.
 65. Respondent police department granted both leaves of absence.

66. Dr. James Bransfield is Medical Director of Respondent Medical Services Section in August 1990.
67. On August 14, 1990, Dr. Bransfield issued a memorandum to the Personnel Division indicating that the Complainant had exhausted her medical benefits and stating his medical opinion that Complainant was unable to perform police duties, pursuant to the February 1990 recommendation of Stanard and Associates.
68. On August 15, 1990, Complainant applied for and was granted a disability pension from *The Retirement Board of the Policemen's Annuity and Benefit Fund City of Chicago (Annuity Fund)*.
69. From March 30, 1990, until Complainant applied for benefits pursuant to the *Annuity Fund* in August 1990, Complainant made no written or other request to Respondent to return to work from her leave of absence.
70. From March 30, 1990, until Complainant applied for benefits pursuant to the *Annuity Fund* in August 1990, Complainant submitted no additional medical reports to Respondent from her private doctors indicating she had recuperated from her depression.
71. During the time when Complainant requested a one-year leave of absence in August 1990, and an extension of that leave of absence for another year in August 1991, Complainant did not make a request to Respondent to terminate her leave of absence and return her to work.
72. At that time, in 1990-1991, Drs. Calica and Conroe were still treating Complainant for depression.
73. Complainant received favorable employment evaluations dated February 12, 1988; August 4, 1988; and February 7, 1989.
74. During those performance periods, Complainant was receiving medical treatment for depression.
75. During the time Complainant was being treated for depression in 1986 through 1990, she did not feel the depression interfered with her ability to perform the job duties to which she had been assigned in the accounting department in the police auto pound; however, Complainant had some reservations about returning to work in full unrestricted duty.
76. Complainant believed that she could perform various job positions while she was being treated for depression, including, timekeeper, citation clerk, review officer, radio equipment officer, remote terminal operator, assistant desk officer, identification section, evidence and recovered property clerk, document services, and callback officer.
77. In February 1992, Respondent sent Complainant to Stanard & Association for an evaluation.
78. Complainant was reinstated to full duty with Respondent police department in February 1993.
79. Complainant worked until May 16, 2001, when she retired.

CONCLUSIONS OF LAW

1. Complainant is an "employee" as defined by the Act at Section 2-101(A)(1).
2. Respondent is an "employer" as defined by the Act at Section 2-101(B)(1).

3. The Human Rights Commission has jurisdiction over this matter and the Parties pursuant to the Act.
4. Complainant failed to establish a prima facie case of handicap discrimination by a preponderance of the evidence.

DETERMINATION

Complainant has failed to establish, by a preponderance of the evidence, that her handicap is unrelated to her ability to perform the job duties of a police officer.

DISCUSSION

The Act prohibits discrimination in employment on the basis of physical or mental handicap, Section 1-103(I). Complainant argues that Respondent discriminated against her when it failed to make reasonable accommodation for her mental and physical handicap conditions (depression and TMJ) by refusing to allow her to return to work, forcing her to go on medical leave.

Due to the Commission panel's remand, only alleged acts of discrimination claimed to have occurred 180 days or less prior to September 26, 1990 are the subject of this action. Therefore, by my calculation, no alleged acts of discrimination that occurred prior to March 30, 1990 are proper subjects of this Complaint.

Generally, Illinois courts apply a three-part analysis to unlawful employment discrimination cases. Initially, the burden is on the Complainant to establish a prima facie case of unlawful discrimination. If the Complainant is successful, a rebuttable presumption of unlawful discrimination by the employer is created. The employer may rebut the presumption by articulating a legitimate, nondiscriminatory reason for its decision. When the employer rebuts the presumption, the burden shifts back to Complainant to prove the employer's articulated reason was a mere pretext for unlawful discrimination. **Raintree Health Care Center v. Illinois Human Rights Commission**, 173 Ill 2d 469, 672 N.E.2d 1136, 220 Ill Dec. 124 (1996).

To establish a prima facie case of handicap discrimination, Complainant must establish three elements: 1) that she is handicapped within the meaning of the Act; 2) that Respondent took an adverse action against her related to her handicap; and 3) that her handicap is unrelated to the performance of her job. **Habinka v. Human Rights Commission**, 192 Ill.App.3d 343, 548 N.E.2d 702 (1st Dist. 1989); **Kenall Mfg. Co. v. Illinois Human Rights Commission**, 152 Ill.App.3d 695, 504 N.E.2d 805 (1st Dist.1987).

In accordance with the Act, "Handicap" means a determinable physical or mental characteristic of a person and which characteristic is unrelated to the person's ability to perform the duties of a particular job or position, section 5/1-103(I)(1). Therefore, while the first and third elements of the prima facie case are stated separately, they are

connected, in that in order to be considered handicapped under the Act, by definition, Complainant's handicap must be unrelated to her ability to perform the duties of her job.

Therefore, it must first be determined whether Complainant's TMJ and depression are conditions that are unrelated to Complainant's ability to perform her job duties.

Background

Initially, Complainant had worked for the Chicago Police Department as a civilian employee with the auto pound section for nine years where she was a typist. Complainant then applied for a police officer position with Respondent. Complainant began working for Respondent as a sworn police officer in April 1982, following successful completion of the police academy training, which she had begun in April 1981.

In accordance with the *Rules and Regulations of the Police Department City of Chicago* published November 1, 1975, and in effect at the time of this action, the duties of sworn Police Officers are:

Sworn members will devote themselves fully to the attainment of the letter and spirit of the Departmental policy and goals, and will conduct themselves at all times in such a manner as will reflect credit upon the Department with emphasis on personal integrity and professional devotion to law enforcement. They will: 1. Render the highest order of police service to all citizens, whether or not during specifically assigned hours. 2. Obey all laws and promptly execute all lawful orders. 3. Know and conform to the Department's Policy, Rules, Regulations, Orders, Procedures and Directives. 4. Receive, record and service immediately all complaints and requests for service in accordance with Department Orders. 5. Provide security and care for all persons and property coming into their custody. 6. Maintain a military bearing and render military courtesy when in uniform. 7. Maintain a courteous and respectful attitude toward all persons.

Complainant's first assignment in April 1982 was in the patrol division in the 21st district office. There, Complainant made arrests, wrote tickets, drove around in a squad car and responded to calls from the public. Complainant was in the patrol division for approximately a month. Complainant was then transferred to the women's lockup. There, Complainant was required to oversee the women's lockup and restrain arrestees, if necessary.

In October 1982, Complainant was involved in an off-duty car accident and was off of work while hospitalized with a lower back injury. When she returned to work, Complainant requested and was assigned to convalescent duty status as an accounting officer in the auto pound unit because her back injury prevented her from being able to fight and restrain prisoners, which duties were a requirement for the women's lockup. The accounting officer position required Complainant to collect money for storage and tow fees from the public, count the money, balance the money and receipts, complete the paperwork, seal the money in a bag and deliver the money to City Hall. Complainant would only go along to deliver the money to City Hall if there were no other personnel

available to do so. In the capacity as the accounting officer, Complainant wore a police officer uniform and carried a service revolver. Complainant remained in limited duty status until 1985, when she was again hospitalized.

In 1985, Complainant underwent surgery on her jaw to treat a temporal mandibular joint problem (TMJ). Complainant was on medical leave for her jaw surgery for 4-5 weeks. When Complainant returned to work, she again requested to be assigned to the limited duty program because of her back and TMJ injuries. This request was granted and Complainant returned to the auto pound section. Again, while on limited duty in the auto pound section, Complainant wore a uniform and carried a service revolver. While on limited duty status, Complainant was required to report to Respondent's medical section every six months.

Complainant remained on limited duty until August 1986, when she had yet another surgery. On August 12, 1986, Complainant underwent a hysterectomy and was away from work on medical leave from August 12, 1986 until June 1, 1987. Complainant was then returned to work on limited duty status in the auto pound. Following her hysterectomy, Complainant became depressed. Complainant began seeing her own personal physicians —Dr. Calica, a therapist, and Dr. Conroe, a psychiatrist — for her depression. Complainant reported this depression treatment to Dr. Mesnick in Respondent's medical section in early 1987. Every six months, Complainant tendered statements from her doctors concerning her depression and TMJ condition to Respondent's medical section.

Around December 1987, Complainant presented a letter from Dr. Conroe dated December 4, 1987, to Dr. Mesnick, requesting that Complainant remain working in limited duty status. Complainant was allowed to continue to work on limited duty status working in the auto pound section during 1987 through early 1989.

In February 1989, Complainant was ordered to report to Respondent's medical section with letters from her doctors concerning the status of her medical condition. On March 2, 1989, Complainant reported to Respondent's medical section to be examined by Dr. Strodolow. Complainant presented letters from Dr. Conroe, dated February 27, 1989, and Dr. Calica, dated February 26, 1989, informing the medical section that Complainant was being prescribed Prozac and urging the medical section to continue Complainant in her present limited duty position due to her vulnerability to stress and anxiety.

Dr. Strodolow determined Complainant was fit for full duty, in spite of her doctors' recommendations that she remain in her present limited duty position. After Complainant protested to Dr. Strodolow, he advised her to see Sgt. Reese in the medical section. Complainant was advised by Sgt. Reese to file an appeal to Dr. Strodolow's recommendation.

On March 20, 1989, Complainant filed a written appeal to Dr. Strodolow's recommendation and included the letters from Dr. Calica and Dr. Conroe concerning her depression and her prescribed Prozac medication. Complainant also submitted a letter

dated February 23, 1989 from Dr. Lagrotteria, who was treating Complainant for her TMJ symptoms, indicating that Complainant had right open TMJ Surgery and a meniscectomy, that she was involved with a diagnostic evaluation for advanced degenerate jaw disease, and that she should avoid any physical injury and or possibility of being involved with physical trauma.

Complainant was summoned to the medical section on March 30, 1989. When she arrived, Respondent ordered her to turn over her star, shield and identification, stripped her of her police powers and told her to go home. Complainant was informed at that time that she was required to take a mandatory psychological evaluation at the Issac Ray Center on April 18, 1989, to be performed by Dr. Janik. Complainant appeared for the evaluation and was interviewed and tested by Dr. Janik. Complainant was later given a copy of Dr. Janik's May 3, 1989 report of the results of her testing, indicating that she was found "psychologically unfit to be returned to full active duty."

Complainant saw Dr. Janik again around August 1989 for a psychological evaluation and received a recommendation dated September 29, 1989 that she not return to full active duty.

In February 1990, Respondent ordered Complainant to report to Dr. Janik at Stanard & Associates. Complainant reported, but did not see Dr. Janik at that time and came back later and saw Dr. Fralicx. Fralicx's report of this visit, dated March 12, 1990, indicated that Complainant was unfit to return to work

In April 1990, Complainant was notified that she would have to use her compensatory and vacation time in order to remain in pay status, which Complainant did.

On August 14, 1990, Dr. Bransfield made a determination, based upon the February 1990 recommendation of Stanard & Associates, that Complainant was unable to perform police duties. Dr. Bransfield notified Complainant that she had currently expended all of her medical time and that she would have used all of her compensatory and vacation time by August 25, 1990. After having used her compensatory and vacation time, Complainant would have to apply for a disability pension from the *Annuity Fund*.

Complainant disagreed with Dr. Bransfield's determination, contending that, at the time of the determination, she was able to perform the accounting duties she had previously been performing in the auto pound section and that she would have been able to perform other duties in other departments that did not require her to engage in patrol or field duties. Complainant contends Respondent did not allow her to return to work and failed to offer these positions to her as a reasonable accommodation to her mental and physical handicaps.

Has Complainant established a prima facie case of handicap discrimination?

Respondent argues that Complainant cannot make a prima facie showing because Complainant cannot establish that her medical condition of depression is unrelated to her

job duties. Respondent maintains all officers must be capable of carrying a weapon and exercising the power of arrest. Respondent contends Complainant had been stripped of her police powers due to a psychological determination by its medical vendor that she was unfit for duty on March 30, 1989 and by subsequent psychological evaluations — by Issac Ray Center in April 1989 and August 1989, and by Stanard & Associates in February 1990—and that these determinations of psychological unfitness for duty prevented Complainant from qualifying for any position, with or without an accommodation. Respondent argues that an essential element of the police officer position is to be able to effect an arrest and exercise police powers, which powers Complainant did not have at the relevant time of this claim.

The record shows that Complainant was evaluated by Respondent's medical vendors and found psychologically unfit to perform police duties on three separate occasions in April, 1989, August 1989 and February 1990. Once a sworn officer is found to be unfit, Respondent's medical leave process allows a police officer to take varying medical and other leave options in order to remain in pay status. Once these leave options successively run out, and a police officer needs additional time in which to recuperate — as was Complainant's plight in August 1990 — a police officer has the option of taking an unpaid medical leave, applying for disability benefits through the *Annuity Fund*, or resigning. If not, Respondent would begin separation proceedings. Complainant opted to apply for benefits with the *Annuity Fund* and was granted benefits under this program.

Complainant argues that she had been performing the duties of an accounting officer in the auto pound section for approximately three years from 1987 until 1989 while she was suffering with the same medically diagnosed depression and had received high performance appraisals from her supervisor. Complainant maintains that Respondent could have accommodated her in August 1990 by restoring her police powers and authority to carry a weapon and putting her back to work in that same position or in other available positions that did not require field or patrol duty.

Complainant's argument that Respondent could have restored her police powers and police authority is not before this tribunal, as the appropriateness of the revocation of those powers is time-barred in accordance with the Commission's April 25, 2001 *Order and Decision*. The record here shows that Complainant possessed no police powers in August 1990 and was, therefore, not eligible to be placed in any position which required police powers, as she had previously been determined to be psychologically unfit for police duty and that determination had not been changed. Further, it is undisputed that Complainant's psychological condition had worsened from its status pre-February 1989, based on Complainant's doctors' diagnoses that she had a resurgence of her depression symptoms and her susceptibility to stress, which necessitated prescribed anti-depressive drugs.

Complainant advances the argument that since the essential duties of a police officer, according to Commander Wedgbury, are to ambulate without assistance and to safely carry a firearm, Complainant met these requirements as demonstrated by her ability to pass the annual firearm range testing examination. This reasoning is shortsighted, as

Wedgbury credibly testified that psychological fitness is necessarily tied to carrying and using a firearm safely. Further, there is no question as to whether Complainant could safely handle a firearm since she, herself, testified that she lacked the psychological confidence at the time in question to make split second decisions, which could put her partner and the public in danger.

Further, Complainant testified that in the accounting officer position she wore a uniform and carried a weapon, collected and counted money, balanced the deposits, prepared the paperwork, and sometimes delivered money to City Hall. I am unconvinced that these duties would not necessarily require a police officer to carry a weapon and exercise police powers. Also, the *Rules and Regulations* requires police officers to render law enforcement whether or not they are on specifically assigned duty hours. Due to Complainant's psychological unfitness, she was not authorized to carry a weapon or exercise police powers; therefore, it is difficult to imagine Complainant attempting to protect the auto pound proceeds or otherwise enforce the law without these crucial law enforcement tools, no matter what department she would have been assigned to.

On this issue, I find Respondent's cite to **Kelly and Village of Lombard Police Department**, __ IL HRC Rep. __, (1988CB3007, October 5, 1992), persuasive, where the Commission agreed that the ability to effect an arrest is a very real and substantial part of the job of being a peace officer. In **Kelly**, the Commission reasoned that, "although it may not happen on a daily basis, the ability to effect an arrest when there is resistance is an essential duty of the job in question. Just as a lifeguard who cannot swim cannot do his job, even though most lifeguards do not go in the water, a police officer who cannot effect an arrest without undue danger to himself, does not have the ability to patrol."

Wedgbury testified that there are some circumstances where officers are allowed to work in limited duty after having been stripped of their police powers; however, these officers are assigned to limited duty for short periods of time because they are awaiting adjudicatory due process proceedings, such as for drug and alcohol misuse. Complainant is not similarly situated for this comparison, as Complainant was stripped of her police powers because she was determined psychologically unfit for police duties and she would remain in that status until psychological fitness was determined.

The *Rules and Regulations* state:

VII. Medical Separations

It is incumbent [sic] that all members of the Department have the physical stamina and psychological/emotional stability to properly perform all required police duties. If in the opinion of the Superintendent, upon recommendation of the Police Surgeon after examination, any member does not have the physical condition or psychological/emotional stability required to perform police duties competently and efficiently, he may file charges with the Police Board seeking the separation of any such member. The Police Board will then conduct a hearing, which will follow the same procedures as a disciplinary hearing. This section

shall in no way limit or interfere with any accrued medical leave rights or retirement benefits of any member.

Respondent cited the Commission decision in **Foss and City of Chicago Dept. of Fire** __ Il HRC Rep. __, (1985CN2420, March 13, 1992), affirmed in **City of Chicago v. Illinois Human Rights Commission**, 264 Ill.App.3d 982 (1st Dist. 1994), in its closing statement during public hearing. Although **Foss** was cited for its precedential value related to the issue of whether it is appropriate to offset pension benefits from a damage award, I find the **Foss** decision helpful in analyzing whether Complainant's handicap is unrelated to her job duties. In **Foss**, the Commission agreed that Respondent discriminated against Complainant on the basis of handicap when it refused to allow him to return to work following a diagnosis of the medical condition syncope. There, Dr. Mesnick, Respondent's medical director, made a determination that Complainant had a high-grade heart condition related to his syncope. The Commission agreed that Dr. Mesnick's diagnosis was not supported by his own medical tests nor was it supported by the medical tests and examinations conducted by complainant's treating physicians. Foss' treating physicians had concluded that, after a symptom free period of six months to a year, he could safely return to work and that there was no evidence of a high-grade heart condition. Foss successfully completed this six-month period symptom free; however he was not allowed to return to work.

The contrast here is that Complainant's own physicians submitted reports dated February 1989 indicating Complainant's psychological condition had made a turn for the worse and had escalated from the initial onset of the depression in 1986. Complainant's doctors had concluded that Complainant was very vulnerable to stress and anxiety and that she should avoid any possibility of being involved in physical trauma. Her own physicians determined that this susceptibility to stress warranted Complainant being prescribed Prozac, an anti-depressive medication, and Complainant submitted no medical reports that this condition had eased during the time between March 1990 and August 1990, when she applied to the *Annuity Fund*. Further, Complainant testified to her uneasiness with making the kinds of split second decisions armed police officers are often called upon to make.

It is clear that the requirements to be a police officer include psychological/emotional stability. Not only did Respondent medical section recommend, after examination and recommendation, that Complainant was psychologically unfit, Complainant testified that she lacked the psychological confidence at the time in question to make split second decisions, which could put her partner and the public in danger. Complainant submitted no evidence that she provided any further documentation to Respondent from March 30, 1990 until August 1990, when she became subject to the rules of the *Annuity Fund*, to support that her psychological fitness had improved.

Given this, there is no accommodation that could have been given to Complainant that would allow her to perform her job duties, except for giving her time to recuperate from her psychological illness by allowing her to utilize medical leave and other accrued time, which Respondent did.

Complainant has failed to demonstrate that psychological soundness is unrelated to Complainant's ability to carry out the duties of a sworn police officer; therefore, Complainant's prima facie showing fails.

RECOMMENDATION

Complainant has failed to prove by a preponderance that she was handicapped within the meaning of the Act; accordingly, it is recommended that the Complaint in this matter and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: July 24, 2003